

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
ECM BioFilms, Inc.,
a corporation, also d/b/a
Enviroplastics International

Docket No. 9358
PUBLIC

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR
LEAVE TO FILE A REPLY**

Shortly after 5:00 PM, ECM served Complaint Counsel with a motion for leave to file a reply regarding ECM's motion to either recess the trial or call Dr. David Stewart out of order, at the beginning of our case. We oppose the motion for leave to file a reply because the proposed reply does not satisfy Rule 3.22(d), and is essentially another merits brief. We disagree with many claims made therein and—although we believe the Court has a sufficient record to resolve the instant dispute—we would welcome the opportunity to submit further briefing, should the Court find that necessary or helpful.

We raise one further issue not apparent from ECM's proposed filing. ECM's proposed reply trumpets our alleged failure to attach ECM's response to an email proposing an additional alternative to Dr. Stewart's testimony beyond the one we initially raised during the parties' meet and confer on the subject. *See* Proposed Reply at 3 ("In a response email sent that same day (and conspicuously not included in Complaint Counsel's exhibits to this Court), ECM explained how Complaint Counsel's offer is extremely prejudicial.") (citing RX-C) (ECM's emphasis).

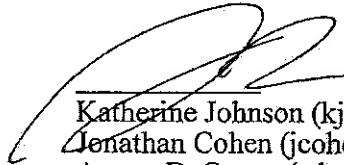
The reason that Complaint Counsel did not attach this email is because we never received it. In fact, based on recent communications between the parties, it became apparent to ECM's counsel that certain emails from ECM were not reaching us. At 3:29 PM, ECM's counsel left us a voicemail stating that "it seems like maybe you're not receiving emails from my address," and offering to help resolve the issue. ECM filed its Proposed Reply anyway. The parties have since communicated regarding the IT problem, which both sides are attempting to understand and

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address. However, ECM's implication that Complaint Counsel intentionally omitted RX-C was both premature and incorrect.

Dated: July 21, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy and one hard copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy and one hard copy to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580

One electronic copy to **Counsel for the Respondent**:

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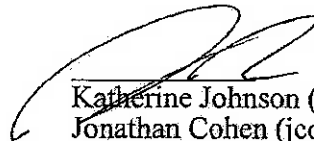
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I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: July 21, 2014



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